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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/371,219 01/11/95 BRANDHORST

G 17825/161DDJ

EXAMINER  
DERAKSHANI, F

F1M1/0602

ART UNIT PAPER NUMBER

FOLEY & LARDNER  
3000 K STREET NW SUITE 500  
WASHINGTON DC 20007-5109

3104

DATE MAILED: 06/02/95

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on \_\_\_\_\_ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☒ Notice of References Cited by Examiner, PTO-892.
- ☒ Notice of Draftsman's Patent Drawing Review, PTO-948.
- ☒ Notice of Art Cited by Applicant, PTO-1449.
- ☐ Notice of Informal Patent Application, PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☐ \_\_\_\_\_

Part II SUMMARY OF ACTION

- ☒ Claims 1-5 are pending in the application.  
Of the above, claims \_\_\_\_\_ are withdrawn from consideration.
- ☐ Claims \_\_\_\_\_ have been cancelled.
- ☐ Claims \_\_\_\_\_ are allowed.
- ☒ Claims 1-5 are rejected.
- ☐ Claims \_\_\_\_\_ are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.
- ☒ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
- ☐ Formal drawings are required in response to this Office action.
- ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
- ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
- ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).
- ☒ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☒ been received ☐ not been received  
☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
- ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
- ☐ Other

EXAMINER'S ACTION

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**Part III DETAILED ACTION**

*Claim Rejections - 35 USC § 112*

1. Claims 1-5 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 6, "the opening" lacks proper antecedent basis.

In claim 3, line 3, it is unclear what axis "axial dimensions" is referring to.

*Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,2 and 4 are rejected under 35 U.S.C. § 102(b) as being anticipated by Spies.

Spies shows a device for emptying a tube (14) comprising a ring (50), housing (16), piston (40), cap (64), dispensing opening (92), annular engaging portion (70) and supporting surface (24).

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*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

5. Claim 5 is rejected under 35 U.S.C. § 103 as being unpatentable over Spies in view of McGill '364.

Spies lacks the ring having a conical surface. McGill '364 shows a ring having a conical surface (41) to funnel the dispensed material to the outlet. It would have been obvious to one of ordinary skill in the art to have modified the Spies ring with a conical surface as taught by McGill '364 to funnel the dispensed material to the outlet.

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*Allowable Subject Matter*

6. Claim 3 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112 and to include all of the limitations of the base claim and any intervening claims.

*Drawings*

7. The drawings are objected to under 37 C.F.R. § 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, in claim 3 the "play" between the housing and ring supporting surface must be shown or the feature cancelled from the claim. No new matter should be entered.

*Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hutchason, McGill '820 and Cooke were cited to show further examples of devices for emptying a tube.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philippe Derakshani whose telephone number is (703) 308-0264.

PD

May 27, 1995

PP  
5-229

*Andres Kashnikow*

ANDRES KASHNIKOW  
SUPERVISORY PATENT EXAMINER  
ART UNIT 314

5/30/95